

## CHAPTER 43

### CHILD CUSTODY AND VISITATION PROCEEDINGS — APPOINTMENT AND DUTIES OF GUARDIANS AD LITEM, ATTORNEYS FOR MINORS, CHILD CUSTODY INVESTIGATORS, AND CHILD AND FAMILY REPORTERS

H.F. 133

AN ACT relating to guardians ad litem, attorneys for minor children, child custody investigators, and child and family reporters involved in child custody and visitation proceedings.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 598.10, subsection 1, paragraph a, Code 2017, is amended to read as follows:

a. The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the other party and the children and to enable such party to prosecute or defend the action. The court may on its own motion and shall upon application of either party or ~~an attorney or a~~ guardian ad litem appointed under [section 598.12](#) or ~~an attorney appointed under~~ [section 598.12A](#) determine the temporary custody of any minor child whose welfare may be affected by the filing of the petition for dissolution.

Sec. 2. Section 598.12, Code 2017, is amended to read as follows:

**598.12 ~~Attorney or guardian~~ Guardian ad litem for minor child — ~~investigations.~~**

~~1. The court may appoint an attorney to represent the legal interests of the minor child or children of the parties. The attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify before the court on matters pertinent to the legal interests of the children.~~

~~2. 1.~~ 1. The court may appoint a guardian ad litem to represent the best interests of the minor child or children of the parties. The guardian ad litem shall be a practicing attorney and shall be solely responsible for representing the best interests of the minor child or children. The guardian ad litem shall be independent of the court and other parties to the proceeding, and shall be unprejudiced and uncompromised in the guardian ad litem's independent actions.

a. Unless otherwise enlarged or circumscribed by a court ~~or juvenile court~~ having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include all of the following:

(1) ~~Conducting general~~ an initial in-person interviews ~~interview~~ with the child, if the child's age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, ~~if authorized by the person's legal counsel.~~

(2) ~~Conducting interviews with the child, if the child's age is appropriate for the interview, prior to any court-ordered hearing.~~ Maintaining regular contact with the child.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, ~~including visiting the home or residence or prospective home or residence each time placement is changed.~~

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, prior to any court-ordered hearing.

(5) Obtaining ~~firsthand~~ knowledge, ~~if possible,~~ of facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any depositions, hearings, or trials in the matter in which the person is appointed guardian ad litem, and filing motions or responses or making objections when necessary. The guardian ad litem may cause witnesses to appear, offer evidence, and question witnesses on behalf of the best interests of the child. The guardian ad litem may offer proposed or requested relief and arguments in the same manner allowed the parties by the court. However, the guardian ad litem shall not testify, serve as a witness, or file a written report in the matter.

b. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian

ad litem may interview any person providing medical, mental health, social, educational, or other services to the child; may attend any meeting with the medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem; and may inspect and copy any records relevant to the proceedings; and shall specifically be authorized to communicate with any individual or person appointed by the court to conduct a home-study investigation. The parent, guardian, or other person having custody of the child shall immediately execute any release necessary to allow the guardian ad litem to effect the authorization granted under this paragraph.

~~3.~~ 2. The same person may shall not serve both as the child's legal counsel attorney and as guardian ad litem, nor shall the same person serve both as the child and family reporter and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interests of the child as guardian ad litem, or a separate guardian ad litem is required to fulfill the requirements of [subsection 2](#).

4. The court may require that an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. The investigation report completed by the appropriate agency shall be submitted to the court and available to both parties. The investigation report completed by the appropriate agency shall be a part of the record unless otherwise ordered by the court.

~~5.~~ 3. The court shall enter an order in favor of the attorney, the guardian ad litem, or an appropriate agency for fees and disbursements as submitted by the guardian ad litem, and the amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for court costs is indigent, in which event the fees amount shall be borne by the county.

### Sec. 3. NEW SECTION. 598.12A Attorney for minor child.

1. The court may appoint an attorney to represent the minor child or children of the parties. If appointed under [this section](#), the child's attorney shall be solely responsible for representing the minor child or children. The child's attorney shall be independent of the court and other parties to the proceeding, and shall be unprejudiced and uncompromised in the attorney's independent actions.

a. Unless otherwise enlarged or circumscribed by a court having jurisdiction over the child or by operation of law, the duties of an attorney with respect to a child shall include all of the following:

(1) Conducting an initial in-person interview with the child, if the child's age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child if authorized by the person's legal counsel.

(2) Maintaining regular contact with the child.

(3) Interviewing any person providing medical, mental health, social, educational, or other services to the child, as necessary to advance the child's interests.

(4) Obtaining knowledge of facts, circumstances, and the parties involved in the matter as necessary to advance the child's interests.

(5) Attending any depositions, hearings, and trials in the matter and filing motions or responses or making objections when necessary. The child's attorney may cause witnesses to appear, offer evidence on behalf of the child, and question witnesses. The child's attorney may offer proposed or requested relief and arguments in the same manner allowed the parties by the court. However, the child's attorney shall not testify, serve as a witness, or file a written report in the matter.

b. The order appointing the child's attorney shall grant authorization to the child's attorney to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the child's attorney may interview any person providing medical, mental health, social, educational, or other services to the child; may attend any meeting with the medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the child's attorney; and may inspect and copy any records relevant

to the proceedings. The parent, guardian, or other person having custody of the child shall immediately execute any release necessary to allow the child's attorney to effect the authorization granted under this paragraph.

2. The same person shall not serve as both the child's guardian ad litem and the child's attorney, nor shall the same person serve as both the child and family reporter and as the child's attorney.

3. The court shall enter an order in favor of the child's attorney for fees and disbursements as submitted by the child's attorney, and the amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for court costs is indigent, in which event the amount shall be borne by the county.

**Sec. 4. NEW SECTION. 598.12B Child custody investigators and child and family reporters.**

1. The supreme court shall prescribe and maintain standards for child custody investigators and child and family reporters.

2. The court may require a child custody investigator or a child and family reporter to obtain information regarding both parties' home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. A report of the information obtained shall be submitted to the court and available to both parties. The report shall be a part of the record unless otherwise ordered by the court.

3. The court shall enter an order in favor of the child custody investigator or child and family reporter for fees and disbursements, and the amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for court costs is indigent, in which event the amount shall be borne by the county.

Sec. 5. Section 598.16, subsection 2, Code 2017, is amended to read as follows:

2. Except as provided in [subsection 7](#), upon the application of the petitioner in the petition or by the respondent in the responsive pleading thereto to the petition, or, within twenty days of appointment, of an attorney appointed under [section 598.12 598.12A](#), the court shall require the parties to participate in conciliation efforts for a period of sixty days from the issuance of an order setting forth the conciliation procedure and the conciliator.

Approved April 12, 2017